

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission - Mail Stop 1170

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**COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION**

1. Introduction. The Community Broadcasters Association ("CBA") hereby submits these Comments in response to the Commission's *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry* in the above-captioned proceeding. CBA is the trade association of the nation's low power television ("LPTV") stations. It conducts various activities on behalf of LPTV and represents the interests of the LPTV industry in public policy forums.

2. Because the Commission has designated LPTV as a "secondary" service from a spectrum point of view,<sup>1/</sup> it has largely ignored LPTV in proposing rules and procedures for the migration of the nation's television system from NTSC to digital television ("DTV"). This neglect is clearly contrary to the public interest. The Commission is ignoring the fastest growing segment of the television industry, with an investment of over \$150 million,<sup>2/</sup> and the only segment that directs its efforts primarily toward meeting the needs of smaller markets, including

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<sup>1/</sup> See Section 74.703 of the Commission's Rules.

<sup>2/</sup> This estimate was developed by a group of LPTV broadcasters during discussions at the CBA's annual convention earlier this month. They estimated that some 50 LPTV stations have invested more than \$1 million each (in at least one case more than \$6 million), another 50 have invested more than \$250,000 each, some 500 have invested more than \$100,000 each, and hundreds more have invested \$75,000-\$100,000 each.

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both small geographic communities and specialized interest groups. In an era of increasing mergers, super-mergers, and mega-mergers, along with the rapid implementation of direct-to-the-home satellite-based television services which of necessity are national in nature, the Commission is standing by idly as the fundamental concept of localism that has been the bedrock of the public interest standard for a half-century disappears at the hands of media giants. The Commission is also ignoring an industry whose growth is creating thousands of new jobs -- now employing some 7,500 people -- while full power stations are merging and consolidating with "efficiencies" and automation more often than not result in personnel reductions.

3. There is neither any need nor any reason to ignore localism in the DTV era; but if localism is to be preserved, the Commission, whose job is to serve the public rather than any special interests, will have to take the initiative. The DTV implementation process on the private side is being controlled by the biggest of the big -- national organizations like Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB"), which by their nature must reflect the views of the largest media giants, who provide most of their funding and control most of their votes. These organizations cannot be expected to look out for the needs and interests of smaller interest groups that have neither the size nor economic clout to maintain the full-time political, lobbying, and public relations presence that MSTV, NAB, and their larger members do.<sup>3/</sup>

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<sup>3/</sup> By way of example, hundreds of thousands, if not millions, of dollars have been spent by major broadcast interests in attending meetings of the ATV Advisory Committee and its numerous sub-committees, as well as funding the Advanced Television Test Center ("ATTC"). CBA does not have the resources to fund that level of participation or to provide representatives to attend numerous working committee meetings.

4. There are more licensed LPTV stations than full-power TV stations in the nation today.<sup>4/</sup> Of the 1,761 licensed LPTV stations, the Nielsen audience rating service is tracking the audiences of 364, which presumably warrant tracking because they provide meaningful commercial programming services to the public on a regular basis.<sup>5/</sup> CBA has heard the refrain many times before that all of these stations were licensed on the basis of being a "secondary" service, so they should not be heard to complain if they are shut down by DTV, which is a "primary" service. But since when is the public interest served by shutting down any service that is in significant demand by the public? To cut off the discussion because LPTV stations were initially licensed on a "secondary" basis is to say that no new industry should ever succeed -- the exact opposite of the Commission's philosophy in almost every other context. Every Experimental and Developmental license that has been issued by the Commission has also been secondary, but that does not mean that successful experiments are ignored. On the contrary, successful experiments tell us what is important to nurture and preserve. No one ever told the public that the programs they want to watch are "secondary."<sup>6/</sup> The removal of service that the public enjoys and wants is simply not justified under any public interest standard.

5. DTV Technical Standards Must Be Open and Public, and LPTV Must Be Considered.

During the DTV planning process, the Commission, in the fulfillment of its statutory public interest mandate, must focus its attention on LPTV and the important service it provides. As

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4/ According to the Commission's public notice of October 6, 1995, as of September 30, 1995, there were 1,761 licensed LPTV stations and 1,542 licensed full power stations.

5/ This information was provided through the courtesy of K-B Ltd., Milwaukee, Wisconsin.

6/ And the public does want to watch LPTV programs. For example, W41BF provides the only Spanish-language service in Miami that is not Mexican-oriented and in its first year of operation has achieved a Nielsen come rating of 10.5% of the Hispanic audience in the Miami market without cable carriage.

a first step, it should ensure that any technical standards used to create a DTV table of allotments are made public and readily available. The Commission has not done that; and at the present time, the computer analysis leading to an allotment table is being controlled by MSTV, through a private contractor. MSTV has proposed a DTV allotment table, under which LPTV operators do not even know with what parameters they must deal with in trying to defend themselves against displacement. This is rulemaking behind closed doors, which is the antithesis of the principles underlying the Administrative Procedure Act.<sup>7/</sup>

6. LPTV Stations Should Be Included in the DTV Database. The Commission must require that any allotment computer program be run with LPTV stations included in the database, with appropriate protection standards for those LPTV stations. That is the only way to find out how many LPTV stations it would be possible to protect if protection were required. MSTV and NAB obviously have no incentive to undertake that effort, because LPTV stations represent competition to their members. But the DTV table of allotments must be the result of reasoned decision-making by the Commission, not the private interests of those who can afford to design their own computer programs. In other words, it is irrational for the Commission to make any determination of whether or not it is feasible to preserve LPTV stations in a DTV environment if it does not even ask the question of the computer program.

7. When CBA has inquired about the possibility of taking LPTV stations into account in the database, Commission engineers have repeatedly replied that the DTV allotment algorithm is too complex and fragile to introduce any new factors. That may or may not be so. The point

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<sup>7/</sup> Of course, it is possible to retain the owner of the computer program to make more runs if one has sufficient money; but the public interest and ability to pay are not supposed by synonymous, save perhaps in the context of spectrum auctions, which the broadcast establishment has strongly opposed in the DTV context.

is that officials with ultimate decision-making power must at least attempt an experiment to find out, and they should place a heavy burden on those who say that nothing can be done.

8. A good first approach would be to address first the 36 markets which are subject to a freeze on LPTV applications pending resolution of the instant proceeding, as those markets are clearly the ones where it will be most difficult to find places for LPTV, at least during the transitional period when full power stations each occupy two channels. Studies of smaller markets may be made later, and the process should become easier as it moves away from densely populated areas.<sup>8/</sup>

9. Protection of LPTV Stations Should Be Required Where Possible. No matter how difficult or impossible it may be to protect all LPTV stations in a DTV allotment table, the Commission should make it clear that as many LPTV stations as possible must be protected. Thus any time there is a choice of DTV channels, that choice should be made so as to minimize the impact on LPTV, which means selecting a DTV channel either to leave an LPTV station in place or in a manner that opens up a replacement channel for the LPTV station.

10. Time Should Be Allowed for Individual Market Studies. Third, after a preliminary DTV allotment table is published, the Commission must publish all of the relevant technical standards in a readily usable form. Even if computer studies indicate that some LPTV stations cannot be protected, individual LPTV operators threatened with displacement should be afforded an opportunity to make their own studies and to propose changes in the table that would make that displacement unnecessary, while still accommodating full power stations with DTV

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<sup>8/</sup> As smaller markets are studied, translators will become a factor to be considered. They should be included in the studies; for just as LPTV provides the only local programming for some markets, translators sometimes provide the only over-the-air service of any kind to remote communities. Translators also provide the potential for local programming development, as the Commission's Rules permit translator licensees to convert to LPTV status at will, simply by notifying the Commission.

channels.<sup>9/</sup> This activity will be no different from that involved in the dozens of petitions for changes in the FM and TV allotments tables that the Commission entertains every year.<sup>10/</sup> In other words, no allotment table should be adopted based on one or more nationwide computer runs without an opportunity for interested parties to study individual situations and to recommend changes in individual allotments.

11. Legal and Technical Standards Are Needed for LPTV Migration to DTV. LPTV operators intend to remain a part of the nation's television system after it migrates from NTSC to DTV. Clear procedures should be established now for LPTV's participation. That means publishing separation and/or interference standards as soon as a firm decision is made on the Grand Alliance System, so that LPTV operators may search for available channel space in the DTV environment. These standards should be tailored to the smaller service areas normally served by LPTV stations, with shorter mileage separations than are used for full power stations and LPTV signal contour protection standards equivalent to the NTSC 74 dBu protection standard.<sup>11/</sup>

12. When DTV spectrum space is found for LPTV, incumbent LPTV licensees and permittees should be given the first opportunity to apply for LPTV DTV channels, before the general public is invited to apply. The reasons are no different from those justifying giving full

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<sup>9/</sup> For example, if an LPTV operator must be displaced only because an NTSC full power station wants collocated ATV facilities, but LPTV displacement could be avoided by locating the ATV facility at another place without loss of market coverage, clearly consideration should be given to preserving the LPTV station.

<sup>10/</sup> The computer runs that established the initial FM and TV allotment tables did not saturate the spectrum; and when an individual proponent puts his or her mind to it, he or she is often able to find a way to fit in a new allotment, perhaps by changing one or more other allotments or changing the coordinates of a reference point.

<sup>11/</sup> There is no reason to deny an LPTV ATV service based on separation standards designed for much larger stations.

power incumbent stations the first opportunity to apply for full power DTV channels and providing a DTV allotment for every existing NTSC station. Existing service to the public should be preserved, and those who have invested in providing service should be given every opportunity to continue that activity.

13. Further, to avoid disruption of service to the public, LPTV stations with an existing track record should be given an opportunity to apply for any full power DTV allotment in their market not taken by a full power station before that allotment is opened to applications by the general public.<sup>12/</sup> And those that cannot find full power allotments but are able to find channels for low power DTV operation should be given primary status when they are awarded or initiate service on their low power DTV channels. The DTV spectrum will be more heavily saturated than the NTSC spectrum was when the NTSC allotment table was first adopted or is today, so there will no longer be any need to require LPTV stations to operate on a secondary basis to preserve flexibility for full power growth. The new DTV system will be in place, and all those who serve under it should be kept in place as long as they are able to continue to serve.

14. The Capabilities of Digital Compression Should be Harnessed. It is now conceded by most of the parties involved in the transition to DTV that the multi-channel capability of digital compression will be at least important as improved definition video and audio in the DTV era. It is likely that existing terrestrial television broadcasters will be able to transmit up to four video programming channels with quality equal or comparable to today's NTSC service in the short term, and likely even more channels later. What is less clear is what obligations will be imposed on broadcasters on the new channels that will suddenly become available to them.

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<sup>12/</sup> LPTV stations should also be free to propose new ATV allotments.

15. CBA suggests that local service should be an important part of the obligation of broadcasters on multiple channels and that if a locally programmed LPTV station in a community cannot otherwise be accommodated, the full power broadcasters in the market should be obligated to make one of their compressed channels available to distribute the LPTV programming. The need for carriage of the LPTV station's programming on a full power compressed channel may turn out to be only temporary, during the time when the full power broadcasters are each occupying two channels, one NTSC and one DTV, as that is the time when the pressure on spectrum now occupied by LPTV stations is likely to be the greatest.<sup>13/</sup>

16. Spectrum Recapture Should Provide for LPTV. The Commission has suggested that it may pack DTV television broadcasting into fewer than the 68 channels (408 MHz) now allotted for NTSC broadcasting, thereby making some of today's TV spectrum available for non-broadcasting use in the future. Efficient use of the spectrum is always desirable. However, the TV spectrum should not be "packed" in a way that shuts out LPTV or prevents LPTV stations from operating in a DTV world. LPTV service is too important to lose, and there is no reason to take that service away from the public.

17. However the DTV allotment scheme may be structured, it should make provision for LPTV. LPTV channels may be interleaved with full power television channels, as they are today. Alternatively, if the Commission packs the DTV spectrum densely enough, it might set aside several channels specifically for LPTV, thereby avoiding issues of LPTV conflicts with

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<sup>13/</sup> There is precedent for the broadcast community as a whole being required to find a way to accommodate a service with important public service aspects, without regulation specifying exactly which station must make the channel available. Section 73.593 of the Commission's Rules prohibits the noncommercial educational FM broadcasters in a community from selling subcarrier capacity if the ultimate result is the commercial utilization of all subcarrier capacity in the market to the exclusion of radio reading services for the blind, without assigning the responsibility for accommodating reading services to any specific station.



full power stations, and affording an opportunity for the LPTV industry truly to flourish where the marketplace will support it.<sup>14/</sup>

18. Conclusion. LPTV is growing rapidly and is providing new and innovative services to the public, independently, with no special government concessions, no subsidies, very few cable carriage rights,<sup>15/</sup> and little else but entrepreneurial spirit and responsiveness to the market. This story is one the Commission keeps wanting to be told -- private enterprise, on its own, and at its best. For the Commission to turn its back on this dramatic story in the DTV migration process would be tantamount to giving up on local service; turning the television business over entirely to media giants, whose nature requires them to compete for mass audiences; and writing off the role of small business in the media mix. The media diversity that is America's strength is enhanced significantly by LPTV, and the Commission must never forget to encourage that diversity.

19. If the Commission does not attend to the preservation of LPTV in the DTV conversion process, the result could be the destruction of millions of dollars of investment and the loss of thousands of jobs. No less significant, important services on which the public relies - often their only local video service -- may be lost. These could include the only television

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<sup>14/</sup> Setting aside channels for LPTV at one or both ends of the ATV band would also have the desirable effect of establishing a guard band that would be populated with stations less likely to cause interference to non-broadcast operations adjacent to the TV band than full power stations would cause. Thus the vexing problems encountered by the Commission with interference from TV Channels 14 and 69 to adjacent land mobile operations in Atlanta and elsewhere would be avoided. See *Broadcast Corp. of Georgia*, 96 FCC 2d 901 (1984), leading to the adoption of formal rules in *Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations* (MM Docket No. 87-465), 6 FCC Rcd 5148, 69 RR 2d 1070 (1991).

<sup>15/</sup> Only LPTV stations below the 160 Metropolitan Statistical Areas, in counties with no full power station, have any opportunity for cable carriage rights. See 47 USC §534(h)(2) (Sec. 614(h)(2) of the Communications Act).

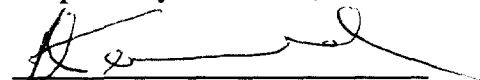
stations within 50 miles of a community (*e.g.*, WKAG-LP, Hopkinsville, KY, or the North Georgia Television LPTV network); the only stations serving a significant foreign-language community in a large city (*e.g.*, the only full-time Spanish language television broadcast services in the Washington, D.C. market are LPTV stations; and Louisville, Kentucky's only African-American television station is an LPTV station now under construction); the only stations focusing on the needs of suburban rather than urban areas and not seeking to imitate central city stations (*e.g.*, the Bruno-Goodworth group of stations near Pittsburgh); stations with award-winning programming (*e.g.*, W52AZ, Evansville, IN, WJAN-LP, Miami, FL, and many others); the only stations in a market whose news excludes crime and violence and accentuates positive events (*e.g.*, W19AW, Baton Rouge, LA); and the only service for a specialized audience group (*e.g.*, Arkansas Media, LLC, and its affiliates are assembling a nationwide network of LPTV stations to broadcast programming of interest to disabled persons). These examples are repeated a hundredfold and more throughout the nation. All this service may be lost in order to permit the nation's full power stations to occupy two channels at once, probably with duplicative programming, during the DTV transition phase; and ultimately, the number of stations serving the public could be cut dramatically. That result does not appear to CBA to be "progress" or to represent a future better than the past. Rather, it seems the opposite.

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Respectfully submitted,



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Elizabeth A. Sims

(bar admission pending)

Counsel for the Community  
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## **CERTIFICATE OF SERVICE**

I, Laura Ann Campbell, do hereby certify that I have this 20th day of November, 1995, caused to be sent by hand-delivery, copies of the foregoing "Comments of the Community Broadcasters Association" to the following:

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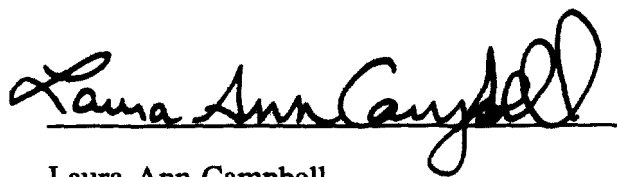
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A handwritten signature in black ink, reading "Laura Ann Campbell", written over a horizontal line.

Laura Ann Campbell